

SCHEDULES

SCHEDULE 7

PROTECTIVE PROVISIONS

PART II

PROTECTION OF THE RAILWAYS BOARD

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the appropriate authority and the Railways Board, have effect for the protection of that board.
- (2) In this Part of this Schedule—
 - "appropriate authority" does not include the Railways Board;
 - "railway property" means any railway of the Railways Board, and any works connected therewith for the maintenance or operation of which the Railways Board are responsible, and includes any land held or used by the Railways Board for the purposes of any such railway or works;
 - "the specified works" means so much of any of the works authorised by this Act (other than the A20 improvement works) as may be situated upon, across, under or over, or within 15 metres of, railway property or may in any way affect railway property;
 - "construction" includes reconstruction and for the purposes of paragraphs 8, 11 and 12 below includes maintenance and repair of the specified works;
 - "plans" includes sections, drawings, particulars and schedules of construction.
- 2 The appropriate authority shall not under the powers conferred by section 8 of this Act acquire compulsorily any railway property but may create and acquire such easements and rights as may reasonably be required for the purposes specified in that section in any such property delineated on the deposited plans.
- 3 (1) The appropriate authority shall, before commencing the construction of the specified works, supply to the Railways Board such proper and sufficient plans thereof as may reasonably be required and shall not commence the specified works until plans thereof have been approved in writing by the engineer of the Railways Board or settled by arbitration.
- (2) If within 28 days after such plans have been supplied to the Railways Board their engineer shall not have notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.
- 4 If within 28 days after such plans have been supplied to the Railways Board the Railways Board give notice to the appropriate authority that the Railways Board desire themselves to construct any part of the specified works forming part of Work No. 1 which, in the opinion of the engineer of the Railways Board, will or may affect the stability of railway property then, if the appropriate authority desire such

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part of the specified works to be constructed, the Railways Board shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the appropriate authority in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (if given) of the appropriate authority.

- 5 Upon signifying his approval or disapproval of the plans the engineer of the Railways Board may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the construction of the specified works to ensure the safety and stability of railway property; and such protective works as may be reasonably necessary for those purposes shall be constructed by the Railways Board with all reasonable dispatch, and the appropriate authority shall not commence the construction of the specified works until the Railways Board shall have notified the appropriate authority that the protective works have been completed.
- 6 The appropriate authority shall give to the engineer of the Railways Board not less than 28 days' notice of their intention to commence the construction of any of the specified works and, except in emergency (when they shall give such notice as may be reasonably practicable), of their intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property.
- 7 (1) The construction of the specified works shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (if given), and to the reasonable satisfaction, of the engineer of the Railways Board, and in such manner as to cause as little damage to railway property as may be and as little interference as may be with the conduct of traffic on the railways of the Railways Board.
- (2) If any damage to railway property or any such interference shall be caused by the carrying out of the specified works, the appropriate authority shall, notwithstanding any such approval as aforesaid, make good such damage and pay to the Railways Board reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage or interference.
- (3) Nothing in this paragraph shall impose any liability on the appropriate authority with respect to any damage, costs, expenses or loss attributable to the act, neglect or default of the Railways Board or their servants, contractors or agents.
- 8 The appropriate authority shall at all times afford reasonable facilities to the engineer of the Railways Board for access to the specified works during their construction and shall supply to him all such information as he may reasonably require with regard to the specified works or the method of construction thereof.
- 9 The Railways Board shall at all times afford reasonable facilities to the appropriate authority and their agents for access to any works carried out by the Railways Board under this Part of this Schedule during their construction, and shall supply to the appropriate authority such information as they may reasonably require with regard to such works or the method of construction thereof.
- 10 (1) If any alteration or addition, whether permanent or temporary, to railway property shall be reasonably necessary during the construction of the specified works, or during a period of twelve months after their completion in consequence of their construction, such alterations and additions may be carried out by the Railways Board.

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- (2) If the Railways Board give to the appropriate authority reasonable notice of their intention to carry out such alterations or additions, the appropriate authority shall pay to the Railways Board the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by the Railways Board in maintaining, working and, when necessary, renewing any such alterations or additions.
- (3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the appropriate authority to the Railways Board under this Part of this Schedule.
- 11 The appropriate authority shall repay to the Railways Board costs reasonably incurred by the Railways Board—
- (a) in constructing any part of the specified works on behalf of the appropriate authority as provided by paragraph 4 above or in constructing any protective works under paragraph 5 above including, in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by the Railways Board in maintaining and renewing such works;
 - (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting railway property and signalling railway traffic and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the specified works;
 - (c) in respect of any special traffic working upon any existing railways of the Railways Board resulting from any speed restrictions, or any substitution or diversion of services, which may, in the opinion of the Railways Board, be required by reason or in consequence of the construction of the specified works;
 - (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction of the specified works;
 - (e) in respect of the supervision by the engineer of the Railways Board of the construction of the specified works.
- 12 (1) Subject to sub-paragraph (2) below, the appropriate authority shall be responsible for, and make good to the Railways Board, costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to, or reasonably incurred by, the Railways Board—
- (a) by reason of the construction of the specified works; or
 - (b) by reason of any act or omission of the appropriate authority, or of any person in their employ, or of their contractors or others whilst engaged upon the construction of the specified works;
- and the appropriate authority shall indemnify the Railways Board from and against claims and demands arising out of, or in connection with, the construction of the specified works or any such act or omission.
- (2) The fact that any act or thing may have been done in accordance with plans approved by the engineer of the Railways Board, or in accordance with any requirement made

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by him, or under his supervision, shall not (if it was not attributable to the act, neglect or default of the Railways Board, or of any person in their employ, or of their contractors or agents) excuse the appropriate authority from any liability under this Part of this Schedule.

- (3) The Railways Board shall give to the appropriate authority reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the appropriate authority.
- 13 Any difference arising between the appropriate authority and the Railways Board under this Part of this Schedule shall be determined by arbitration.